Proper use of Schedule and Multiple Award Contracts

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Great Tools

- The Federal Supply Schedules, other GWACs, and multiple award contract/BPA portfolios provide great “surge capacity” for quick response requirements
- Get needs met quickly while retaining competition

Requires Good Market Research

- Need to do good market research to understand which schedule holders are capable of performing the requirement
- Do this hand in hand with technical experts
- In the process, may refine requirement– of course, before issuing RFQ

For Successful Outcomes

- Allow adequate time to respond
  - How long will it take the **second or third** offeror to respond????
- Be specific/realistic about types and quantities required
- Allow for alternative performance methods
  - More than one way to skin the cat
  - Lets commercial acumen come to bear

That Will Withstand Scrutiny

- Document the file re what you did and why
  - Especially important when using an exception
- Be scrupulously fair
- Communications before and after award should be 2 way

What's the Point???

- Congress believes that the Department of Defense is not following Congressional intent with respect to competition in the awarding of task orders for services using multiple award instruments
- Congress intended for a competitive environment to exist throughout the life of the multiple award contracts
  - Good prices
  - Good quality

What happens if you DON'T follow the rules

- FY 2002 NDAA
  - Section 801-Management of Procurement of Services
    - Requires services to managed as weapon systems and other products are
  - Section 803- Competition Requirement for the Purchase of Services Pursuant to Multiple Award Contracts
    - Requires DoD to issue DFARS policy requiring competition in the purchase of services under multiple award contracts.

More Help from Congress

- FY 2005 NDAA
  - Section 802-Internal Controls for Department of Defense Procurements Through GSA Client Support Centers
    - GSA Client Support Centers must comply with defense procurement requirements for buys over $100K
    - DoD and GSA IGs will verify compliance
    - One year waiver period by OUSD(AT&L)
  - Section 854-Defense Procurements Made Through Contracts of Other Agencies
    - No buys over the SAT from non-Defense agencies unless DoD review and approval procedures are followed

Fair Opportunity Exceptions

- Agency's need is of such unusual urgency that providing an opportunity to all awardees would result in unacceptable delays [FAR 16.505(b)(2)]
- Only one source is capable of responding due to the unique or specialized nature of the work [FAR 16.505(b)(2)]
- The new work is a logical follow-on to an existing task order where contractors were given a fair opportunity to be considered [FAR 16.505(b)(2)]
- The order must be placed with a particular contractor in order to satisfy a minimum guarantee. [FAR 16.505(b)(2)]
- There is a statute that authorizes or requires purchase from a particular source.

FSS Orders Over $100,000

The CO must EITHER

- Issue the notice to as many schedule holders as practicable, consistent with market research appropriate to the circumstances, to reasonably ensure that proposals will be received from at least 3 sources that offer the required work

OR

- Contact all schedule holders that offer the required work by informing them of the opportunity for award

Market research is key. COs must understand which schedule contractors can do the work.

FSS Orders Over $100,000

- If less than 3 proposals are received, the CO must document why reasonable efforts would not result in more offers. COs have discretion, but it is linked to good market research.

- The only exceptions to “fair opportunity” are the 5 exceptions specified under FASA

Other than FSS over $100,000

- All awardees that offer the required work must be provided a copy of the description of work, the basis upon which the contracting officer will make the selection, and given the opportunity to submit a proposal .

- The CO must consider all proposals submitted.

- The only exceptions to “fair opportunity” are the 4 exceptions specified under FASA and any statute authorizing or directing a particular source

Latest OSD Policy

- OSD Policy Memo on “Proper Use of Non-DoD Contracts” 29 Oct 2004, effective 1 Jan 2005
  - Applicable to acquisition of services AND supplies
  - Applies above the simplified acquisition threshold ($100,000)
  - Agencies and departments must establish a pre-award review process/procedures to ensure that using non-DoD vehicles are in the best interest of the Department of Defense (Army, Navy, AF done)
  - Provide DoD unique terms and conditions to assisting agencies
  - Develop post-award review processes/procedures to ensure data is captured and analyzed on non-DoD contract vehicle usage

DFARS Interim Rule

- DFARS Interim Rule 2002-D024 (Issued 1 October 2003)
  - Applicable to acquisition of services
  - Review process and procedures established by each agency or department

Direct Orders (ARMY)

- The PM or equivalent with the assistance of the CO must certify (before PR is completed):
  - The order is in the best interest of the Army considering the factors of satisfying customer requirements, cost effectiveness and price, justification for using the non-DoD contract vehicle for the supplies and/or services, delivery schedule, non-availability of a suitable contract within DoD, contract administration (surveillance plan for monitoring activities of the non-DoD Agency), socio-economic opportunities and any other applicable factors.

Direct Orders (cont)

- The supplies or services to be provided are within the scope of the non-DoD contract. Coordination with the non-DoD contracting officer is required to verify that the requirement is within the scope of the non-DoD Agency's selected contract.
- The funds authorized are legal and proper for the acquisition and used in accordance with appropriation limitations to include a written Army/DoD legal review. The PM or the requiring activity shall contact the funds holder/certifying official to validate that the funds are available and appropriate for the acquisition.
- The terms, conditions and/or requirements unique to DoD or the Army are incorporated into the order to comply with applicable statutes, regulations and directives.

Assisted Orders (ARMY)

- The CO will assist the PM to find the source that best fits our needs. The PM with the assistance of the CO will certify

  - The order is in the best interest of the Army considering the factors of satisfying customer requirements, cost effectiveness and price (including fees to be paid), for using the non-DoD contract vehicle for the supplies and/or services, delivery schedule, non-availability of a suitable contract within DoD, contract administration (surveillance plan for monitoring activities of the non-DoD Agency), socio-economic opportunities and any other applicable factors.

Assisted Orders (cont)

- The supplies and services to be provided are within the scope of the non-DoD basic contract. Coordination with the non-DoD contracting officer is required to verify the requirement is within the scope of the assisting agency's selected contract.
- The funds authorized are legal and proper for the acquisition and used in accordance with appropriation limitations to include a written legal review. Provide a method for monitoring usage of funds by type and fiscal year, if applicable. The PM or the requiring activity shall contact the funds holder/certifying official to validate that the funds are available and appropriate for the acquisition.

Assisted Orders (cont)

- The terms, conditions and/or requirements unique to DoD or the Army are incorporated into the order to comply with applicable statutes, regulations and directives.

Other Army Requirements

- Must get copy of the FPDS report from the servicing agency for assisted orders
- DASA(P&P) must review and approve all assisted orders over $500M
- The PEO must review and approve all assisted orders between $100M and $500M
- Under $100M follow MACOM/ACA procedures

OSD Intent

- Pre-Award Review Processes/Procedures
  - Does this meet the customer's needs – quality, delivery, price
  - Are the requirements within scope?
  - Is it cost effective (including fees and discounts)?
  - Who performs contract administration?
  - Is funding consistent with appropriation?

- Post-Award Review Processes/Procedures
  - Coordinate with assisting agencies to ensure proper data capture.
  - Analyze data on the number and value of transactions using non-DoD contracts.
  - Assess proper use, effectiveness, cost.

What do we expect from servicing agencies?

- Compliance with the FAR and DFARS
  - Competition Requirements- Section 803 (2002)
  - Contract Consolidation-Benefit Analysis
  - PBSA
  - File Documentation
- Support of DoD Policy on "Proper Use of Non-DoD Contracts"
  - Verification of compliance with DoD policy
  - Commitment to Open and Timely Communication with DoD Customer
  - Make the contract available for review by DoD personnel

Servicing agencies also must

- Train
  - Internal- Providing assisting agency support to the DoD Customer
  - File documentation
  - DFARS unique requirements (Berry Amendment, UID, etc)
  - Training of Top DoD Users
  - On-Line Courses
  - Proper Marketing of Vehicles
- Review compliance – “802 Like” (2005)

Other Assisting Agency Issues

- Reporting
  - Reliable Data Capture
  - Operating Budget - Plan and Execution
  - Fee Structure/Fees Paid/”854 Like” (2005)
  - FPDS (Assisting Agency, Customer, Commodity, Value)
- Accurate advertising and marketing of contract vehicles and organization capabilities
  - Assisting Agency advertising in print, radio, etc. and marketing to individual customers
  - Contractor’s role and responsibility

Bottom Line

With Revenue Comes Responsibility